

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
HONORABLE JOSEPHINE L. STATON, JUDGE PRESIDING
CERTIFIED TRANSCRIPT

PRESLIE HARDWICK,)
)
 PLAINTIFF,)
)
 VS.) SACV NO. 13-1390-JLS
)
 COUNTY OF ORANGE, ET AL.,)
)
 DEFENDANTS.)
 _____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SANTA ANA, CALIFORNIA
FRIDAY, MARCH 20, 2015
2:21 P.M.

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APPEARANCES OF COUNSEL:

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FOR THE DEFENDANTS, COUNTY OF ORANGE, ET AL.:

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1 **SANTA ANA, CALIFORNIA; FRIDAY, MARCH 20, 2015; 2:21 P.M.**

2 THE CLERK: CALLING CALENDAR ITEM NO. 1,
3 SACV 13-1390-JLS, PRESLEE HARDWICK VERSUS COUNTY OF ORANGE,
4 ET AL.

02:21:15 5 COUNSEL, YOUR APPEARANCES, PLEASE.

6 MR. INGOLS: DENNIS INGOLS, FROM THE OFFICES OF
7 ROBERT R. POWELL, ON BEHALF OF THE PLAINTIFF, WHO IS PRESENT
8 WITH ME IN COURT.

9 THE COURT: GOOD AFTERNOON.

02:21:24 10 MR. WATKINS: GOOD AFTERNOON, YOUR HONOR.

11 NORM WATKINS, PANCY LIN, ON BEHALF OF DEFENDANTS.

12 THE COURT: GOOD AFTERNOON.

13 ALL RIGHT. WE ARE HERE ON THE DEFENDANTS' MOTION
14 FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, PARTIAL SUMMARY
02:21:42 15 JUDGMENT, AND PLAINTIFF'S MOTION AS WELL.

16 AND SO, I'D LIKE TO GIVE EACH OF YOU THE
17 OPPORTUNITY TO BE HEARD. LET'S GO AHEAD, AND -- I'M GOING
18 TO BEGIN WITH DEFENDANTS' MOTION, SO LET'S HAVE DEFENDANT
19 STEP TO THE PODIUM -- DEFENSE COUNSEL, AND --

02:22:04 20 MR. WATKINS: THANK YOU, YOUR HONOR.

21 THE COURT: ANYTHING YOU WOULD LIKE TO HIGHLIGHT
22 IN YOUR PAPERS, THAT'S FINE; OR ANYTHING THAT YOU THINK IS
23 NOT CLEAR. IN OTHER WORDS, SOMETHING ALONG THOSE LINES,
24 THAT'S FINE.

02:22:17 25 MR. WATKINS: I THINK OUR PAPERS ARE PRETTY

02:22:21 1 COMPREHENSIVE, AT LEAST AS I REVIEW THEM TODAY. I DON'T SEE
2 ANYTHING THAT JUMPS OUT AT ME AS MISSING.

3 I JUST HIGHLIGHT A COUPLE OF THINGS: FIRST, THE
4 ISSUE OF QUALIFIED IMMUNITY, WHICH I THINK IS THE FIRST
02:22:38 5 ISSUE THAT WE ADDRESSED IN THE MOTION. AS WE SEE IT, THE
6 FAMILIAL ASSOCIATION CLAIM ARISING UNDER THE 14TH AMENDMENT,
7 IT HAS BEEN ADDRESSED BY A.A. *COSTANICH*, WHICH IS CITED
8 THROUGHOUT THE BRIEFING.

9 THE COURT: IT'S ALSO ADDRESSED IN *GREENE*, WAS IT
02:23:01 10 NOT?

11 MR. WATKINS: IT WAS.

12 AND THE UNUSUAL THING ABOUT *COSTANICH*, YOUR HONOR,
13 IS THAT WE HAVE THE NINTH CIRCUIT TELLING US WHAT WAS NOT
14 ESTABLISHED IN THE LAW. AND IT'S JUST -- IT SEEMS -- IT
02:23:21 15 SEEMS CLEAR THAT THE DISTINCTION -- THERE'S NO QUESTION, THE
16 DISTINCTION THAT THE NINTH CIRCUIT WAS LOOKING AT WAS ONE
17 BETWEEN CIVIL AND CRIMINAL IN CHILD ABUSE PROCEEDINGS. AND
18 GIVEN THAT DISTINCTION AND GIVEN THIS CASE, THERE'S NO
19 QUESTION THAT BACK IN 2000 WHEN THESE EVENTS OCCURRED --

02:23:43 20 THE COURT: *GREENE* WAS NOT A CRIMINAL CASE, WAS
21 IT?

22 MR. WATKINS: I DON'T BELIEVE IT WAS.

23 THE COURT: ALL RIGHT. IT WAS A CIVIL CASE.

24 MR. WATKINS: IT WAS.

02:23:49 25 THE COURT: AND IT WAS DECIDED -- IT WAS DECIDED

02:23:55 1 IN 2009 AND IT TALKED ABOUT A CLEARLY ESTABLISHED RIGHT.

2 WHY IS *GREENE* NOT MORE ON POINT THAN *COSTANICH*?

3 I THINK THOSE CASES ARE -- ALTHOUGH THE PLAINTIFF

4 SAYS THAT THEY'RE EASILY RECONCILABLE -- AND YOU CALL TELL

02:24:10 5 ME WHY YOU THINK THAT -- I'M NOT SO SURE THAT THEY'RE EASILY

6 RECONCILABLE, BUT *GREENE* SEEMS TO BE MORE ON POINT WITH

7 REGARD TO THESE PARTICULAR KINDS OF PROCEEDINGS: REMOVAL OF

8 A CHILD FROM BIOLOGICAL PARENTS.

9 MR. WATKINS: *GREENE* IS A 2009 CASE WHICH DOESN'T

02:24:28 10 DO MUCH HELP FOR US IN 2000.

11 THE COURT: WELL -- BUT IT TALKS ABOUT AN EARLIER

12 DATE WHEN IT WAS ESTABLISHED -- IT WAS CLEARLY ESTABLISHED

13 IN 2000, I BELIEVE, IS WHAT IT SAYS.

14 MR. WATKINS: I THINK THE REFERENCE IN THERE IS TO

02:24:41 15 A CRIMINAL PROCEEDING, THE 2000 PROCEEDING. I COULD BE

16 MISTAKEN, BUT I THINK THAT'S PRETTY CLEAR.

17 THE COURT: WELL, I THINK THE HOLDING WAS THAT

18 THIS PARTICULAR RIGHT -- IT WAS, IN *GREENE*, NOT A CRIMINAL

19 PROCEEDING -- WAS A RIGHT THAT WAS ESTABLISHED AS OF 2000.

02:24:59 20 THAT'S WHAT IT SAYS.

21 MR. WATKINS: WELL, THE LATER DECISION IN

22 *COSTANICH* CLEARLY TELLS US THAT UNLESS -- ABSENT SOMETHING

23 IN THAT OPINION THAT TAKES THAT CASE OUT OF THE CIVIL CHILD

24 ABUSE REALM, THE NINTH CIRCUIT IS TELLING US THAT FROM ITS

02:25:27 25 PERSPECTIVE, AT LEAST IN THE CIVIL SIDE, THAT THE RIGHT WAS

02:25:31 1 NOT CLEARLY ESTABLISHED. AND *COSTANICH* IS *COSTANICH*. I
2 MEAN, IT'S --

3 THE COURT: UNLESS YOU CAN TELL ME WHY -- UNLESS
4 YOU CAN DISTINGUISH THOSE TWO CASES AND TELL ME WHY THAT'S
02:25:46 5 NOT MORE ON POINT THAN THE *GREENE* CASE, WHICH INVOLVED A
6 PLAINTIFF WHO HAD HER CHILDREN REMOVED FROM CUSTODY PURSUANT
7 TO A JUVENILE COURT ORDER --

8 MR. WATKINS: IF I MAY, YOUR HONOR.

9 THE COURT: -- I DON'T WANT YOU TO READ THE CASE
02:26:03 10 NOW AND TELL ME.

11 MR. WATKINS: OH, NO, NO, NO, NO. I'VE GOT A NOTE
12 FROM MY CO-COUNSEL.

13 *GREENE* IS DEALING WITH A FOURTH AMENDMENT JUDICIAL
14 DECEPTION CLAIM. *COSTANICH* WAS DEALING WITH A FAMILIAL
02:26:24 15 ASSOCIATION CLAIM UNDER THE FOURTEENTH AMENDMENT. THAT'S
16 THE DIFFERENCE. AT LEAST, THAT'S THE DIFFERENCE THAT WE
17 SEE. AND IN *GREENE*, IF I'M NOT MISTAKEN, IT RELIED ON
18 *DEVEREAUX*, WHICH IS A CRIMINAL CASE.

19 THE COURT: BUT IT APPLIED IT TO CIVIL PROCEEDING.

02:26:45 20 MR. WATKINS: IT APPLIED IT TO --

21 THE COURT: AND IT SAID IT WAS ESTABLISHED AS OF
22 2000. IT DID NOT MAKE THAT DISTINCTION THEN.

23 MR. WATKINS: UNDER THE FOURTH AMENDMENT CLAIM.

24 LET ME TURN TO THE FOURTH AMENDMENT CLAIM, BECAUSE
02:27:08 25 I THINK THAT THE QUALIFIED IMMUNITY DOCTRINE APPLIES TO THAT

02:27:13 1 CLAIM AS WELL FOR THIS REASON: THERE'S NO *COSTANICH* IN
2 CONNECTION WITH THAT CLAIM. BUT WHAT WE KNOW -- AND IT'S
3 NOT DISPUTED -- IS THAT IN THIS CASE, THE SOCIAL WORKER
4 REMOVED THE CHILD PURSUANT TO AN ORDER DIRECTING HER TO DO
02:27:31 5 SO AND AN ORDER THAT SHE DID NOT SEEK. IT CAME *SUA SPONTE*
6 FROM THE COURT. THERE ARE NO --

7 THE COURT: WELL, ISN'T THAT A QUESTION OF FACT?
8 I MEAN, THERE WAS THE OFF-THE-RECORD DISCUSSION -- OFF THE
9 RECORD; AND THEN, THE JUDGE MADE THAT DETERMINATION?

02:27:53 10 MR. WATKINS: THERE'S NO QUESTION THERE'S A
11 DISPUTE ABOUT WHO SAID WHAT IN THAT FEBRUARY 15TH VISIT, BUT
12 MY POINT IS A LITTLE DIFFERENT.

13 THE COURT: OKAY.

14 MR. WATKINS: MY POINT IS THIS: THAT AS OF 2000,
02:28:04 15 THERE WERE NO CASES DEALING WITH A SITUATION WHERE A SOCIAL
16 WORKER WENT INTO COURT AND DID NOT SEEK A REMOVAL ORDER AND
17 THAT FOR WHATEVER REASON THE COURT ORDERED REMOVAL AND THE
18 SOCIAL WORKER MADE THE REMOVAL -- COMPLIED WITH THE COURT
19 ORDER AND EFFECTED THE REMOVAL AND WAS THEN HELD TO HAVE
02:28:27 20 VIOLATED CONSTITUTIONAL RIGHTS. THERE WAS NO CASE LAW AT
21 THAT POINT -- IN FACT, I DON'T THINK THERE IS TODAY --
22 SAYING THAT ABIDING BY OR EFFECTING A COURT ORDER CAN GIVE
23 RISE TO A FOURTH AMENDMENT CLAIM.

24 THE COURT: WHY -- WHY IS THAT THE ISSUE: ABIDING
02:28:47 25 BY A COURT ORDER? ISN'T THE ISSUE WHETHER THE COURT ORDER

02:28:51 1 WAS OBTAINED THROUGH DECEPTION?

2 MR. WATKINS: THAT WOULD BE A FACTUAL ISSUE, NO
3 QUESTION ABOUT IT. THE QUESTION THAT WE'RE ADDRESSING ON
4 THE QUALIFIED IMMUNITY FRONT IS WHETHER OR NOT IT WAS
02:29:02 5 CLEARLY ESTABLISHED. ASSUMING FOR ARGUMENTS PURPOSES THAT
6 THE SOCIAL WORKER DID MISREPRESENT THE FACTS, THE QUESTION
7 THEN BECOMES: WAS IT CLEARLY ESTABLISHED IN THE CONTEXT OF
8 A FOURTH AMENDMENT CLAIM THAT A SOCIAL WORKER WHO SAYS
9 SOMETHING THAT IS INCORRECT OR A MISREPRESENTATION BUT
02:29:24 10 NONETHELESS DOES NOT SEEK AND DOES NOT ASK FOR A REMOVAL
11 ORDER AND THE REMOVAL COMES AS A RESULT OF *SUA SPONTE* ORDER
12 FROM THE COURT --

13 THE COURT: BASED ON THE UNDERLYING DECEPTION?
14 YOU HAVE TO ASSUME THAT, BECAUSE THOSE ARE THE FACTS. AND
02:29:42 15 MAYBE EVEN BASED ON SOME SORT OF -- I'M NOT SURE WHAT THE
16 SUBSTANCE OF THE ORAL COMMUNICATIONS WERE BEFORE THE COURT'S
17 DECISION, BUT -- WHEN YOU SAY "NOT SEEKING AN ORDER," I
18 DON'T KNOW WHAT THEY WERE SEEKING OR NOT SEEKING?

19 MR. WATKINS: NO, NO. IT'S UNDISPUTED THAT THE
02:30:00 20 SOCIAL WORKER'S RECOMMENDATION TO THE COURT WAS THAT CUSTODY
21 REMAINED WITH THE MOTHER. THAT'S A WRITTEN SUBMISSION TO
22 THE COURT.

23 NOW, THE -- IN FACT, ONE OF THE CASES, AN
24 UNPUBLISHED CASE CITED BY PLAINTIFF, MAKES A POINT THAT I
02:30:18 25 THINK DRIVES THIS HOME, AND THAT IS THIS *BAKER* CASE. IN

02:30:23 1 THAT CASE THE COURT, IN DEALING WITH THE SIMILAR CLAIM,
2 POINTED OUT AT THE END OF THE DAY THAT BECAUSE THERE WERE
3 MULTIPLE THINGS IN FRONT OF THE COURT WHO ISSUED THE ORDER,
4 IT WAS IMPOSSIBLE TO FIND THAT, BUT FOR THE ALLEGED
02:30:41 5 MISREPRESENTATION, THERE WOULD HAVE BEEN NO REMOVAL.

6 WE HAVE THE SAME SITUATION HERE. THE RECORD IS --
7 AND I DON'T THINK IT WILL BE DISPUTED -- THAT IN ADDITION TO
8 THE ISSUE OF WHO SAID WHAT TO WHOM ON FEBRUARY 15TH, WHICH
9 WAS DISPUTED, THERE'S NO QUESTION THAT THE COURT WAS GIVEN
02:31:02 10 EVIDENCE THAT OTHER MISCONDUCT HAD OCCURRED IN THE NATURE OF
11 MISSED VISITS, MISSED PHONE CALLS AND A MISSED -- EVIDENCE
12 THAT THERE WAS DISCUSSION ABOUT ISSUES IN THE CASE WITH THE
13 CHILD NOT INVOLVED IN FEBRUARY THE 15TH.

14 SO, AGAIN, THE QUESTION IN THE QUALIFIED IMMUNITY
02:31:27 15 AREA IS: AS OF 2000, WAS THERE CLEAR CASE LAW IN THIS
16 CIRCUIT THAT WOULD PUT AN OFFICER ON NOTICE OR A SOCIAL
17 WORKER ON NOTICE THAT IN EFFECTING A COURT ORDER DIRECTING
18 REMOVAL THAT IF ANYTHING WAS SAID IN THAT PROCEEDING THAT
19 WAS FALSE, THAT YOU WERE VIOLATING A CLEAR PRECEDENT WHEN
02:31:57 20 YOU HAD NOT REQUESTED THE REMOVAL ORDER IN THE FIRST PLACE.
21 THAT'S THE POINT, AND --

22 AND I THINK IT'S STILL TRUE TODAY. I DON'T KNOW
23 THAT THERE ARE ANY CASES DEALING WITH THAT -- WITH THE
24 POSSIBLE EXCEPTION OF THE UNPUBLISHED CASE THAT PLAINTIFF
02:32:14 25 CITED.

02:32:15 1 IF I MAY TURN TO ABSOLUTE IMMUNITY?

2 THE COURT: YOU MAY.

3 MR. WATKINS: THANK YOU, YOUR HONOR.

4 THE COURT: AND THERE YOU CAN TELL ME WHY IT IS I
02:32:25 5 SHOULD TREAT A SOCIAL WORKER LIKE A PROSECUTOR?

6 MR. WATKINS: BECAUSE THERE ARE MANY, MANY, MANY
7 CASES THAT SAY YOU SHOULD.

8 THE COURT: IN ALL CONTEXTS? OR JUST IN THE
9 INITIATION OF THE PROCEEDINGS?

02:32:41 10 MR. WATKINS: NO. IN VARIOUS CONTEXTS. SOME YES;
11 SOME NO. THAT WAS THE POINT OF *BELTRAN II*, THE *EN BANC*
12 DECISION. THE LAW HAD BEEN PRETTY WELL UNDERSTOOD UP TO
13 THAT POINT IN TIME THAT ONCE A SOCIAL WORKER INITIATED A
14 PETITION FOR DEPENDENCY THAT EVERYTHING THEY DID FROM THAT
02:33:02 15 POINT ON WAS COVERED BY ABSOLUTE IMMUNITY. IT WAS A
16 HARD-AND-FAST RULE.

17 AND THE WAY I UNDERSTAND *BELTRAN II*, *BELTRAN II*
18 SAYS, *NOT SO FAST. IT ISN'T AUTOMATIC. IT DEPENDS ON THE*
19 *FUNCTION THAT THE SOCIAL WORKER IS PERFORMING. IF THE*
02:33:26 20 *SOCIAL WORKER IS PERFORMING A FUNCTION THAT IS TYPICALLY*
21 *QUASI-PROSECUTORIAL AND, YES, ABSOLUTE IMMUNITY APPLIES; AND*
22 *IF NOT, NO, IT DOESN'T APPLY.*

23 AND, FOR EXAMPLE --

24 THE COURT: SO IF A SOCIAL WORKER IS FABRICATING
02:33:41 25 EVIDENCE DURING THE COURSE OF INVESTIGATION, IT WOULD NOT

02:33:44 1 APPLY?

2 MR. WATKINS: CORRECT. IF A SOCIAL WORKER GAVE
3 FALSE AFFIDAVIT TO THE COURT, IT WOULD NOT APPLY. IN THIS
4 SITUATION, IT'S VERY CLEAR THAT THE CLAIMED MISCONDUCT FELL
02:33:59 5 INTO NEITHER ONE OF THOSE CATEGORIES. THE CLAIMED
6 MISCONDUCT WAS A STATEMENT TO THE COURT OFF THE RECORD,
7 OR -- ACTUALLY, I THINK IT WAS ON THE RECORD, NOT UNDER
8 OATH, MUCH THE SAME AS A PROSECUTOR WOULD MAKE PRESENTING
9 ISSUES TO THE COURT EITHER BEFORE OR AFTER TRIAL ON A GIVEN
02:34:19 10 DAY.

11 THE COURT: WHY WOULD IT BE THE SAME AS A
12 PROSECUTOR?

13 I MEAN, I DON'T SEE THE SOCIAL WORKER ACTING AS A
14 PROSECUTOR OR IN A QUASI-PROSECUTORIAL FUNCTION, NUMBER ONE.

02:34:32 15 NUMBER TWO, I DON'T SEE THAT THE PLAINTIFF IS
16 NARROWING WHAT THEIR CLAIM IS IN THE WAY YOU ARE.

17 DO YOU SEE THAT THE ONLY CLAIM THEY'RE MAKING IS
18 THE SINGLE STATEMENT TO THE COURT OFF THE RECORD? THAT'S
19 THE SCOPE OF THE LITIGATION?

02:34:50 20 MR. WATKINS: I THINK THEY'RE MAKING SEVERAL
21 CLAIMS: ONE, THAT STATEMENT; TWO, THE CLAIM THAT THERE WAS
22 A FAILURE TO PRODUCE EXCULPATORY EVIDENCE. AND WE'VE CITED
23 IN OUR BRIEF A CASE DIRECTLY ON POINT, AND I THINK IT'S --
24 MAYBE *KALINA*, OUT OF THE U.S. SUPREME COURT, THAT RECOGNIZES
02:35:16 25 THOSE AS PROSECUTORIAL FUNCTIONS ENTITLED TO THE IMMUNITY.

02:35:27 1 TURNING, IF I CAN, TO --

2 WELL, BEFORE I LEAVE THAT, THE COURT MENTIONED
3 FALSIFYING EVIDENCE IN AN INVESTIGATION. I DON'T THINK
4 THERE'S ANY DISPUTE. IN FACT, THE COMPLAINT ITSELF ALLEGES
02:35:42 5 THAT THE INVESTIGATION -- STATES THAT THE INVESTIGATION WAS
6 COMPLETE WHEN THE ALLEGED MISCONDUCT OCCURRED. AND IT WAS.
7 THAT'S REALLY NOT A DISPUTE.

8 NOW, WITH RESPECT TO *MONELL*, HERE IT'S JUST A
9 FAILURE OF PROOF. THERE'S NO EVIDENCE OF ANY POLICY, OR
02:36:04 10 CUSTOM, OR PRACTICE FROM THE BOARD OF SUPERVISORS.
11 CERTAINLY, THERE'S NO EVIDENCE OF MULTIPLE INCIDENTS THAT
12 WOULD BE SUFFICIENT TO ESTABLISH A POLICY OR A CUSTOM OR
13 PRACTICE.

14 THE EVIDENCE IN THIS CASE, AS WE'VE POINTED OUT,
02:36:28 15 IS SIMPLY AN ALLEGATION AND THEN, THERE'S REFERENCE TO SOME
16 DISCOVERY RESPONSES THAT WERE MADE IN THE MOTHER'S CASE AND
17 THOSE DISCOVERY RESPONSES ALL ONLY ACKNOWLEDGE COURSE AND
18 SCOPE. SAY, YES, I WAS ON DUTY WHEN THESE EVENTS OCCURRED.

19 AND WE'VE CITED TO AN UNPUBLISHED DECISION OR
02:36:54 20 ORDER FROM THIS COURT, ACTUALLY, WHICH ADDRESSED THAT
21 PRECISE POINT SAYING, *YOU KNOW, AN OFFICER SAYING, YES, I*
22 *WAS ACTING PURSUANT TO MY DEPARTMENT'S POLICIES IS AN*
23 *ACKNOWLEDGMENT THAT I WAS ACTING WRONGFULLY PURSUANT TO*
24 *THOSE POLICIES.*

02:37:12 25 THE COURT: I'M GOING TO STOP YOU. I CAN'T RECALL

02:37:14 1 EVERY CASE I'VE DECIDED. WHEN YOU SAY "THIS COURT," DO YOU
2 MEAN ME?

3 MR. WATKINS: NO, NO, I DON'T. I'M SORRY.

4 THE COURT: OKAY. THERE'S NO SUCH THING AS "THIS
02:37:20 5 COURT," OTHER THAN ME.

6 MR. WATKINS: I'M SORRY, YOUR HONOR. I MEANT OUT
7 OF THIS DISTRICT.

8 THE COURT: OUT OF THIS DISTRICT.

9 OKAY. THE NINTH CIRCUIT IS ONE ENTITY. IF ONE
02:37:27 10 PANEL HOLDS SOMETHING, EVERYBODY ELSE IS BOUND BY IT. I'M
11 NOT BOUND BY SOMETHING SOMEBODY ELSE SAID THAT'S A DISTRICT
12 COURT. BUT IF IT WAS ME, I WOULD WANT TO KNOW AND YOU COULD
13 TELL ME THAT.

14 MR. WATKINS: I'M SORRY, YOUR HONOR. NO, NO. AND
02:37:38 15 WE CITED IT IN THE BRIEF. IT'S JUDGE TAYLOR.

16 BUT ANYWAY -- AND WE INCLUDED IT IN THE BRIEF,
17 BECAUSE IT WAS JUST A THOUGHT. IT JUST WENT RIGHT TO THAT
18 THE POINT.

19 SO UNLESS THE COURT HAS ADDITIONAL QUESTIONS --

02:37:56 20 THE COURT: I DON'T THINK I HAVE ANY MORE
21 QUESTIONS FOR YOU, RIGHT NOW.

22 I HAVE SOME QUESTIONS, PERHAPS, FOR THE PLAINTIFF.

23 MR. WATKINS: THANK YOU VERY MUCH, YOUR HONOR.

24 THE COURT: THANK YOU.

02:38:09 25 I'M GOING TO START WITH YOU WHERE WE JUST ENDED

02:38:13 1 WITH DEFENSE COUNSEL, AND THAT'S ON THE *MONELL* CLAIM. I'M
2 WONDERING WHAT IS THE POLICY, CUSTOM, OR PRACTICE, BECAUSE I
3 LOOKED AT YOUR PAPERS AND TRIED TO FIND, OTHER THAN FINDING
4 THAT THE OTHER JURY FOUND THAT THERE MUST HAVE BEEN ONE, A
02:38:34 5 CITATION, I THINK, TO A CLOSING ARGUMENT WHERE YOU TALK
6 ABOUT ONE; A CITATION TO THE RFA'S, WHICH JUST AGAIN SAYS
7 THAT THEY WERE ACTING PURSUANT TO POLICY AND WHICH I THINK
8 MAY JUST BE A COURSE AND SCOPE OF EMPLOYMENT RESPONSE.

9 I DIDN'T SEE ANY FACTS IN ANY GENUINE STATEMENTS
02:39:01 10 OF FACTS OR ANYTHING ALONG THOSE LINES THAT TELLS ME WHAT
11 THAT POLICY IS, SO I WOULD LIKE YOU TO POINT ME IN YOUR
12 PAPERS TO WHERE YOU DESCRIBE OR STATE AND HAVE EVIDENCE OF
13 WHAT THE POLICY IS THAT --

14 MR. INGOLS: SURE, YOUR HONOR.

02:39:27 15 AS YOU KNOW, THE FILE IS QUITE THICK.

16 THE COURT: I DO AND WE SEARCHED. PERHAPS YOU
17 HAVE IT MORE AT YOUR FINGERTIPS THAN WE DO.

18 (PAUSE.)

19 MR. INGOLS: WELL, YOUR HONOR, ALL IT IS -- IT IS
02:40:06 20 ACCURATE TO SAY THAT ALL THAT IS IN OUR PLEADINGS IS
21 POINTING TO THE COURT OF APPEALS' FINDING THAT THE JURY DID
22 FIND THAT THERE WAS A *MONELL* VIOLATION WHICH WAS BASED IN
23 LARGE PART ON THE REQUEST FOR ADMISSIONS RESPONSES WHICH
24 ADMITTED THAT THEY WERE ACTING IN ACCORDANCE TO POLICY WHEN
02:40:22 25 THEY WERE -- HAVE FOUND TO HAVE MISLED THE JUVENILE COURT.

02:40:26 1 THE COURT: OKAY. ALL RIGHT. SO LET ME LET YOU
2 MOVE ON AND ADDRESS ANY ISSUE THAT YOU'D LIKE TO ADDRESS.

3 MR. INGOLS: WELL, YOUR HONOR, I DO THINK THE
4 PLEADINGS FROM BOTH SIDES WERE QUITE THOROUGH, SO I HAVE
02:40:39 5 VERY LITTLE TO ADD.

6 IT TROUBLES ME ANY SUGGESTION THAT THERE'S AN
7 ARGUMENT THAT IT WAS SOMEHOW UNCLEAR THAT LYING TO A JUDGE
8 IS BAD. IT'S BEEN CLEAR FOR A LONG, LONG TIME. ANY
9 ARGUMENT TO THE CONTRARY SHOULD NOT BE CREDITED.

02:40:51 10 BEYOND THAT, I DON'T HAVE ANYTHING TO ADD. IF YOU
11 HAVE ANY QUESTIONS, I'D BE HAPPY TO TRY TO ANSWER THEM.

12 THE COURT: I DON'T THINK I HAVE ANY FURTHER
13 QUESTIONS. I KNOW YOU CAME ALL THE WAY FROM SAN JOSE. IT'S
14 TOO BAD THAT I DON'T HAVE MORE QUESTIONS FOR YOU AT THIS
02:41:05 15 POINT.

16 YOU DID COME FROM SAN JOSE, RIGHT?

17 MR. INGOLS: I DID, YOUR HONOR.

18 THE COURT: ALL RIGHT. I DON'T HAVE ANY MORE
19 QUESTIONS. I ASKED THE *MONELL* QUESTION THAT I HAD. SO
02:41:14 20 THERE'S REALLY NOTHING TO RESPOND TO AT THIS POINT.

21 SO THE COURT WILL TAKE THE MATTER UNDER SUBMISSION
22 AND THE RULING WILL BE POSTED ON THE DOCKET.

23 WHAT'S OUR TRIAL DATE HERE FOR THIS ONE? DO YOU
24 KNOW?

02:41:29 25 MR. WATKINS: MAY 19TH, I THINK, YOUR HONOR.

02:41:31 1 THE COURT: MAY 19TH.

2 OKAY. AND YOUR FINAL PRETRIAL CONFERENCE IS
3 MAY 1ST. AND I KNOW THAT THIS -- THE FACTUAL CIRCUMSTANCES
4 HERE, YOU'VE BEEN THROUGH THIS BEFORE, BUT HAVE YOU GONE
02:41:48 5 THROUGH A SETTLEMENT CONFERENCE ON THIS CASE?

6 MR. WATKINS: WE HAVE, YOUR HONOR.

7 THE COURT: YOU HAVE. WHEN WAS THAT? HOW LONG
8 AGO?

9 MR. INGOLS: FAIRLY RECENTLY. I DON'T RECALL THE
02:41:57 10 EXACT DATE.

11 THE COURT: OH, IT WAS.

12 MR. INGOLS: A MONTH AGO, YOUR HONOR.

13 THE COURT: ALL RIGHT. DON'T TELL ME WHAT WAS
14 DISCUSSED IN ANY WAY. BUT ARE THERE ANY FURTHER SETTLEMENT
02:42:07 15 DISCUSSIONS THAT ARE ANTICIPATED?

16 MR. WATKINS: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 MR. INGOLS: CERTAINLY NOT PRIOR TO YOUR HONOR'S
19 DECISION.

02:42:14 20 THE COURT: THAT'S FINE. I'LL BE PREPARED TO
21 RULE, PROBABLY, BEFORE YOU WOULD HAVE THE TIME TO ENGAGE IN
22 ANY FURTHER SETTLEMENT CONFERENCES ANYWAY.

23 MR. WATKINS: ALL I'LL SAY WITHOUT GETTING INTO
24 THE IMPERMISSIBLE REALM IS THAT THE SIDES ARE WORLDS APART
02:42:28 25 AND YOUR RULING WOULD, PROBABLY, HELP QUITE A BIT, ONE WAY

02:42:31 1 OR THE OTHER.

2 THE COURT: ALL RIGHT. WELL, WE'LL SEE IF THAT'S
3 THE CASE. I MAY -- AFTER RULING, I MAY ORDER YOU FOLLOW UP
4 WITH A MEDIATOR; OR, IF NECESSARY, A MAGISTRATE JUDGE. I
02:42:43 5 THINK A MEDIATOR, PROBABLY, WOULD WORK, IF YOU ALREADY HAVE
6 SOMEBODY THAT YOU'VE USED BEFORE.

7 MY CLERK IS LOOKING AT ME LIKE THERE MIGHT BE
8 SOMETHING I NEED TO ADDRESS BEFORE I LET YOU GO.

9 (PAUSE.)

02:42:53 10 THE COURT: OH, I'M SENDING OUT -- I'M GOING TO BE
11 SENDING OUT AN ORDER, PROBABLY -- IT MAY NOT GO OUT TODAY,
12 BUT IT WILL, PROBABLY, GO OUT BY MONDAY. YOU ESTIMATED A
13 20-DAY TRIAL. THAT'S REALLY NOT LIKELY TO BE THE CASE IN
14 THIS COURT. BUT IF YOU THINK YOU'RE GOING TO HAVE A 20-DAY
02:43:13 15 TRIAL, YOU'LL SEE WHAT I REQUIRE IN THE ORDER. I REQUIRE
16 YOU TO GIVE ME VERY SPECIFIC INFORMATION ABOUT WHO YOUR
17 WITNESSES ARE, WHAT THEY WILL TESTIFY TO, HOW LONG. AND I
18 ALSO REQUEST THAT YOU LET ME KNOW WHETHER THE PARTIES WILL
19 STIPULATE TO A TIME-QUALIFIED JURY; IF YOU DON'T, THEN WE
02:43:34 20 HAVE A LITTLE BIT OF DIFFICULTY -- WE FOUND -- GETTING
21 JURIES THAT ARE AVAILABLE FOR THAT PERIOD OF TIME.

22 SO THAT ORDER WILL BE COMING. IT WILL BE ISSUED
23 ON MONDAY, AND YOU WILL NOT HAVE A WHOLE LOT OF TIME TO
24 RESPOND TO IT, SIMPLY BECAUSE WE NEED TO KNOW ABOUT THE
02:43:49 25 TIME-QUALIFIED JURY IN ADVANCE, BECAUSE WE HAVE TO SEND OUT

02:43:53 1 QUESTIONNAIRES. AND WITH YOUR TRIAL THIS CLOSE, WE'RE GOING
2 TO HAVE TO SEND THAT OUT PRETTY SOON.

3 MR. INGOLS: WELL, YOUR HONOR, WITH THE
4 UNDERSTANDING THAT THE -- I'M SURE COUNSEL'S ESTIMATE, AS
02:44:02 5 WELL AS OURS, WOULD VARY, DEPENDING ON YOUR RULING.

6 THE COURT: YES, OF COURSE, I DO UNDERSTAND THAT.
7 BUT BARRING THAT AND JUST BASED ON WHAT I HAVE, I'M GOING TO
8 BE ISSUING THE RULING -- I MEAN, ISSUING THE ORDER ABOUT THE
9 WITNESSES. NOW, IF WHAT YOU WOULD LIKE TO DO IS -- I WILL
02:44:21 10 GIVE YOU THE OPTION. IF YOU DON'T HAVE MY RULING ON SUMMARY
11 JUDGMENT BY THE TIME YOU'RE REQUIRED TO RESPOND TO THAT --
12 WHICH I THINK I'M GIVING YOU 10 DAYS -- THEN, AT LEAST
13 RESPOND TO THE PORTION RELATING TO WHETHER YOU STIPULATE TO
14 A TIME-QUALIFIED JURY, BECAUSE THAT'S SOMETHING THAT WE HAVE
02:44:38 15 TO GET OUT; AND THEN, WE CAN ALWAYS CHANGE THAT. WE CAN
16 ALWAYS SAY, *OKAY, WE DON'T NEED A TIME-QUALIFIED JURY NOW,*
17 BUT AT LEAST IT GIVES US THE ABILITY TO GO FORWARD WITH
18 THAT, IF NECESSARY.

19 ALL RIGHT. HAVE A NICE WEEKEND.

02:44:53 20 MR. INGOLS: THANK YOU, YOUR HONOR.

21 THE CLERK: ALL RISE.

22 MR. WATKINS: YOUR HONOR, WE HAD PLAINTIFF'S
23 MOTION ALSO PENDING.

24 THE COURT: I THOUGHT BOTH WERE GOING TO BE UNDER
02:45:05 25 SUBMISSION.

02:45:05 1 I ASSUMED YOU WANTED --

2 MR. INGOLS: THAT'S WHAT I UNDERSTOOD AND
3 INTENDED, YOUR HONOR.

4 THE COURT: I ASSUME SO, BECAUSE I ANNOUNCED BOTH
02:45:11 5 AT THE BEGINNING OF THE HEARING.

6 ALL RIGHT.

7 MR. INGOLS: THANK YOU.

8 MR. WATKINS: THANK YOU, YOUR HONOR.

9 (AT 2:45 P.M., PROCEEDINGS WERE ADJOURNED.)

02:45:15 10
11 -000-

12
13 CERTIFICATE

14 I HEREBY CERTIFY THAT PURSUANT TO SECTION 753,
02:45:15 15 TITLE 28, UNITED STATES CODE, THE FOREGOING IS A TRUE AND
16 CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED
17 PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE
18 TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE
19 REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

02:45:15 20
21 DATE: JUNE 8, 2015
22
23

24 /S/DEBORAH D. PARKER
02:45:15 25 DEBORAH D. PARKER, OFFICIAL REPORTER

DEBORAH D. PARKER, U.S. COURT REPORTER